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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/522,732

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Gordon Leith Morriss

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30593

7590

07/23/2009

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EXAMINER

KASTURE, DNYANESH G

ART UNIT

PAPER NUMBER

3746

MAIL DATE

DELIVERY MODE

07/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/522,732</p>	<p><b>Applicant(s)</b> MORRISS ET AL.</p>	
	<p><b>Examiner</b> DNYANESH KASTURE</p>	<p><b>Art Unit</b> 3746</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 13 July 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Devon C Kramer/  
Supervisory Patent Examiner, Art Unit 3746

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive for the following reasons:

Applicant has argued that Lupfer fails to disclose a "tube" as recited in claims 1 and 33, and that one skilled in the art would allegedly not consider a bellows having convolutions to be a "tube".

Examiner's Response: Tubes that are bellows shaped are common in the art as evidenced by the following patents. Stampfli (US Patent 3,627,257) discloses a "bellows shaped tube" (16), see Column 1, Line 62. Katayama (US Patent 3,773,087 A) discloses "bellows tubes" in line 3 of the Abstract. Nakazawa et al (US Patent 4,804,164) discloses a flow control device with a "bellows-shaped sealing tube 40" as stated in Column 3, Lines 23-24. Tsubouchi et al (US Patent US RE37373 E) discloses "a tube in the shape of bellows" in Column 12, Lines 18-19. Jesse (US Patent 6,935,846) discloses a dosing pump "wherein the tube parts are bellows-shaped" as stated in Column 8, Lines 29-30. The examiner therefore contends that one skilled in the art would consider the bellows of Lupfer to be a tube. Note that claim 1 says nothing about pumping slurry or the collection of dirt and other large particles.

Applicant has argued that Lupfer does not allegedly disclose "the tube structure being movable between laterally expanded and collapsed conditions for varying the volume of the pumping chamber thereby to provide discharge and intake strokes". Rather, the bellows allegedly contracts and expands axially.

Examiner's Response: The serrations/convolutions of the tube (bellows) of Lupfer are located in the lateral section of the tube. The serrations of the bellows would have to move in a manner such that the portion within the serrations expands or collapses. Since the bellows is inelastic ("formed of fabrics" - Column 2, Line 63), the outer diameter of the bellows tube would have to change between the expanded and collapsed positions. The examiner therefore contends that the bellows expands and collapses in the axial AND lateral directions. When fluid flows into the pumping chamber, the bellows expands axially and collapses laterally. When the fluid flows out of the pumping chamber, the bellows collapses axially and expands laterally. The examiner therefore contends that the tube structure is movable between laterally expanded and collapsed conditions as claimed.

Applicant has argued that Lupfer fails to disclose "the pumping chamber being configured to receive pumped fluid to cause the tube structure to move towards the expanded condition".

Examiner's Response: The only time the bellows expands or contracts is when fluid enters or leaves the pumping chamber. The phrase "to cause the tube structure to move" is functional or intended purpose language which does not structurally limit the claim, specially since the 6<sup>th</sup> paragraph of United States Code 35 USC 112 was not invoked - See MPEP 2114. Further, the spring only provides a biasing force and it would not be able to overcome vacuum if the fluid supply through tube 50 was cut off - say by blocking the tube 50. Therefore, the entry of fluid moves the tube structure towards the expanded condition.

Applicant has argued on Page 14, Lines 5-6 of applicant's response that Smith's disclosure allegedly does not disclose a bellows having elastic properties similar to the elastic properties of the tube recited in claim 1. Applicant additionally argues on Page 14, Lines 18-19 of applicant's response that the use of Smith is allegedly improper and that Smith is drawn to a method of making plastic bellows whereas the bellows disclosed by Lupfer are metal.

Examiner's Response: Lupfer does not state that the bellows can be made ONLY of metal. As mentioned in Column 2, Line 63, the bellows can be "formed of fabrics". Smith was ONLY evidenced for a SPECIFIC teaching - to cite that bellows can be formed of inelastic material (Column 1, Lines 13-14). Note that applicant's quoted phrase ".. does not disclose a bellows having ELASTIC properties of the tube as recited in Claim 1" in applicant's response is inconsistent with the actual wording of claim 1: ".. tube structure being flexible and substantially INELASTIC ..". "ELASTIC" is contradictory to "INELASTIC".

All of applicant's arguments have been carefully considered, however they are not persuasive for the reasons above. The examiner therefore respectfully disagrees with applicant's arguments and maintains that the application is not in condition for allowance.